

Appl. No. 10/719,321
Atty. Docket No. AA551C
Amdt. dated April 25, 2006
Reply to Office Action of January 25, 2006
Customer No. 27752

REMARKS

Claim Status

Claims 1-10 are pending in the present application. No additional claims fee is believed to be due.

Claims 1-10 have been amended to change the wording of the preamble to make it clear that the invention relates to a package for absorbent articles. Support for this amendment can be found throughout the specification and claims.

Claim 1 has been amended to correct a typographical error regarding the term "articles" and to include a description of the at least two different absorbent articles to be different in physical properties or structures. Support for this amendment is found at page 4, lines 16-18, and throughout the specification.

Claims 3 and 5 have been amended to change the phrase "an enough size" to "a size large enough". Support for the amendment is found at page 8, line 13 of the specification.

Claim 6 has been amended to correct a typographical error regarding the term "connects", as suggested by the Examiner.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §103(a) Over Sorkin (US Des. 312,208)

Claims 1, 3-4 and 7 were rejected under 35 USC §103(a) as being unpatentable over Sorkin (US Des. 312,208).

The Office Action states that Sorkin teaches an absorbent product. The Office Action states that a plurality of absorbent articles are contained in the package. The Office Action states that the absorbent articles include at least two different types of absorbent articles. The Office Action states that each type of absorbent article is identified by an indication means disposed on the respective absorbent articles. The Office Action states that the indication means of the at least two types of absorbent articles can be seen through the window.

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Contrary to the opinion stated in the Office Action, the Sorkin reference does not teach or suggest that the absorbent articles include at least two different types of absorbent articles having different physical properties or structures, as claimed in the present invention. The Sorkin reference teaches only that the absorbent articles differ in color. Further, there is no teaching or suggestion in the Sorkin reference that the colors have any function other than identification. In fact, by definition, the colors of the Design Patent of Sorkin '208 cannot teach any functional effect, but must be purely aesthetic.

The present invention, on the other hand, claims different types of absorbent articles having different physical properties or structures from the other type of the absorbent articles. As can be seen by the examples, the terms "physical property" and "structure" include, but are not limited to such characteristics as longitudinal length, traversal width and thickness, absorbent capacity, etc. Absorbent articles merely having different colors are not different types of absorbent articles as defined by the claims of the present invention.

Accordingly, the rejection of Claim 1 and the respective dependent claims fails to establish a *prima facie* case of obviousness because the Office Action fails to show that the cited reference teaches or suggests each and every limitation of the claimed invention. Thus, Applicant's attorney respectfully requests that the rejection be withdrawn and the claims be allowed.

Rejection Under 35 USC §103(a) Over Miller (US 5,865,322) in view of Nelson (US 3,306,437)

Claims 1, 2, 4-6 and 8-10 were rejected under 35 USC §103(a) as being unpatentable over U.S. Patent NO. 5,865,322 to Miller in view of U.S. Patent No. 3,306,437 to Nelson.

With respect to Claim 1, the claimed invention is a package for disposable absorbent products comprising at least one window, wherein the package includes at least two different types of absorbent articles having different physical properties or structures, wherein each type of absorbent article is identified by an indicator means disposed on the respective absorbent articles, wherein the indication means of the at least two types of absorbent articles can be seen through the at least one window.

Contrary to the opinion expressed in the Office Action, the Miller reference does not teach or suggest a disposable absorbent product package. Rather, Miller discloses a

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dispensing device such as a stand alone display device comprising multiple partitions and a display sign (figure and col. 31, lines 17-23). The dispensing device in the Miller reference clearly would not provide a consumer with the convenient means of purchasing, transporting, and consuming different types of absorbent articles in a package, as provided by the present invention. On the contrary, the dispensing device displays different types of products that are generally separately stacked in different partitioned portions of the display. Thus, a consumer may purchase either a single type of product or purchase different types of products in different packages. Thus, the Miller reference is not only a completely different problem than the present invention, it actually seems to teach away from a single package with a window that has more than one type of absorbent article.

Further, due to the nature of the dispensing device described in Miller, specifically as a means of separately dispensing different types of products in different packages, one of ordinary skill in the art would not consider the display device of the Miller reference to be a package as contemplated by the present invention.

However, even if the display device in the Miller reference is somehow considered a package, and the discharge ports are windows as contemplated by the present invention, the Miller reference still does not teach or suggest a package having "at least one window... wherein the indication means of the at least two types of absorbent articles can be seen through the at least one window", as claimed. The dispensing device of the Miller reference contains different types of products stacked vertically between partitions such that when one product is removed through the discharge portion gravity will position another product of the same type to be accessible through the discharge portion (figure and col. 3 lines 20-26). As can be clearly seen by the figure in the Miller reference, the dispensing device is configured such that the indication means of only one type of product can be seen through any one discharge portion. If the dispensing device of the Miller reference provided discharge ports wherein the indicating means of more than one type of product could be viewed, then an individual might not be able to properly select among the various products having different characteristics, a problem which the Miller reference claims to solve.

The Office Action, correctly, states that the Miller reference does not teach the indication means of the types of absorbent articles being seen through the window. The Office Action cites the Nelson reference as teaching a carton for a mixed group of small

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packaged articles wherein the articles have an indication means that is visible through the window in the carton in order to find the missing disclosure.

However, the carton in the Nelson reference serves a similar function as the dispensing device in the Miller reference, i.e. providing a means of dispensing packages to a user. Further, the carton in the Nelson reference is generally intended to be a shipping carton. Specifically, the Nelson reference teaches a carton for the shipping and dispensing of tray kits in a hospital, specifically, kits containing a napkin, a salt dispenser, a pepper dispenser, and a sugar dispenser. The Nelson reference does not teach or suggest a disposable absorbent product, comprising two different types of absorbent articles.

The CAFC recently reiterated the "analogous-art" test in its decision of *In Re Leonard R. Kahn*, (04-1616) which requires that the examiner show that a reference is either in the field of the applicant's endeavor or is reasonably pertinent to the problem with which the inventor was concerned in order to rely on that reference. Clearly, the Nelson reference is not in the field of the present invention as the Nelson reference relates to shipping and dispensing cartons for the items set forth above and not to a package for absorbent articles, as provided by the present invention.

Additionally, the Nelson reference is not pertinent to the problem with which the applicant is concerned. The Nelson reference discloses two problems for which its teachings offer solutions. The first is to provide a shipping container having its top and bottom flaps closed and sealed when packed with goods to be dispensed, and with its side panels unopened (col. 1 lines 32-34). The second is to provide a dispensing system wherein the shipping container has an inner container or containers in which the goods to be dispensed are suitably packed for dispensing and wherein all of the containers, as well as the goods, are coded to show the type of goods in the container or containers, as well as in the packages, to be dispensed, and whether the right goods are packed in the same when each said container is opened for dispensing (col. 1 lines 37-45).

Comparing the problems to be solved by the Nelson reference with those of the present invention, namely, to provide a package for disposable absorbent products which includes a plurality of types of disposable absorbent articles contained in the single package that can help users to consumer the contained absorbent articles as needed, it is readily apparent that the Nelson reference is not pertinent to the problem with which the

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present applicant is concerned. Thus, under the analogous-art test it is not proper for the examiner to rely on the Nelson reference as prior art against the present invention.

Further, because the references cited by the Office action are in different technological fields, and because one having ordinary skill in the art would not be motivated to combine the references to provide the claimed invention, Claims 1-10 of the present invention are not obvious over Miller in light of Nelson.

Double Patenting

Applicant transverses the Office Action's rejection for double patenting. However, Applicant agrees to submit any terminal disclaimers that are deemed to be necessary upon the indication of allowable subject matter.

Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. Applicant's attorney respectfully requests that the rejections of the claims be reconsidered in light of the claim amendments and arguments set forth herein and that claims 1-10 be allowed. Early and favorable action in the case is respectfully requested.

Respectfully submitted,

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